

CASE NO.: 1161-1.CIP
Serial No.: 09/883,867
November 14, 2004
Page 6

PATENT
Filed: June 18, 2001

Remarks

Claims 14-16 and 21-24 have been rejected under 35 U.S.C. §103 as being obvious over Patterson et al. (USPN 5,564,844) as modified by Weber et al. (USPN 5,616,897), and Claim 16 has been rejected as being obvious over Patterson et al. as modified by Weber et al. and further in view of any one of three tertiary references used as teachings of bleed orifices. Also, Claims 17 and 18 have been rejected as being obvious over Patterson et al. as modified by Weber et al. and further in view of Brown (USPN 5,806,115), while Claims 19 and 20 have been rejected as being obvious over Patterson et al. as modified by Weber et al. and further in view of McConnell (USPN 5,037,054).

The sole independent claim (14) now requires that the bladder is inflatable and deflatable under control of a controller to move the upper plate with respect to the lower plate through plural up and down cycles while a user is operating an input device on the platform as disclosed on page 10 beginning at line 4. New dependent claims 32-42 have been added, support for which can be found in the specification on pages 11-13 and in Figures 8 and 9. Claims 14-24 and 32-42 are pending.

Rejections Under 35 U.S.C. §103

Claims 14-16 and 21-24 have been rejected under 35 U.S.C. §103 as being obvious over Patterson et al. as modified by Weber et al. Patterson et al. teaches a motor-driven keyboard support, and Weber et al. teaches a roll-up keyboard that can be unrolled by inflating a bladder. Referring to Figure 9 of Weber et al. and the accompanying description commencing at col. 5, line 59, a second bladder can be juxtaposed with the first bladder to establish a static angle between the upper and bottom surfaces.

1161-CIAM3

CASE NO.: 1161-1.CIP
Serial No.: 09/883,867
November 14, 2004
Page 7

PATENT
Filed: June 18, 2001

Nowhere does Patterson et al. suggest use of a bladder, so the requisite prior art suggestion to combine references to arrive at Claim 14 must come from Weber et al. The entire purpose of Weber et al.'s primary bladder is to facilitate rolling and unrolling a flexible keyboard, and the secondary bladder shown in Figure 9 evidently is to establish a predetermined static angle that is determined by the pleats 42. No suggestion appears in Weber et al. that its bladders can withstand repeated cycles during operation, as opposed to occasionally inflating them when the keyboard is to be used and deflating them when it is time to roll up the keyboard for storage. In other words, Weber et al. does not suggest cycling of the bladder to move a keyboard while a person is typing.

With this in mind, even if the motor of Patterson et al. were to be replaced with the bladder of Weber et al., the resulting structure would provide a rigid platform as taught by Patterson et al. that would have a static keyboard angle during operation in accordance with the teachings of Weber et al., the only reference that addresses bladders. Put another way, nothing in the prior art suggests cycling a bladder during operation to cycle a keyboard, as set forth in Claim 14. Thus, this is not a case where two elements from two related references are sought to be combined without further modification in a new claim, but rather a case of arriving at a structure that would not be obtained simply by combining one element from one reference with another element from another reference.

Furthermore, it appears that the evidence of record fails to give the skilled artisan any expectation of success in making the proposed modification as is otherwise required by MPEP §2142. More particularly, the MPEP requires that, to establish a prima facie case of obviousness, an examiner must

1161-CLAIM3

CASE NO.: 1161-1.CIP
Serial No.: 09/883,867
November 14, 2004
Page 8

PATENT
Filed: June 18, 2001

- (1) identify a suggestion to modify the cited reference(s) as proposed by the Examiner to arrive at the instant claimed invention;
- (2) set forth why the Examiner believes that a reasonable expectation of success exists for the proposed modification of the references which would be necessary to arrive at the claimed subject matter; and
- (3) explain where in the prior art all of the claimed limitations are taught or suggested.

Here, since nothing in the prior art suggests that the bladder of Weber et al. can undergo the large number of cycles required to cycle a keyboard during operation, the second prong above cannot be met. Additionally, there is no evidence of an expectation of success in removing the motor of Patterson et al., replacing it with the bladder of Weber et al., and then somehow, in some undefined way, coupling the continuously cycling structure of Patterson et al., which is designed to cooperate a motor, with whatever it might be combined in Weber et al. to cycle a bladder in some untaught manner. It would also seem that the third prong above cannot be met because the element of a controller cycling a bladder through plural cycles during typing is nowhere mentioned in the prior art.

It must be acknowledged here that the examiner has indeed provided a rationale for combining Patterson et al. with Weber et al., namely, "for simplicity in design to reduce the cost of manufacturing". However, no evidence exists on the record that a bladder with various mechanisms including computer-

1161-CLAM3

CASE NO.: 1161-1.CIP
Serial No.: 09/883,867
November 14, 2004
Page 9

PATENT
Filed: June 18, 2001

controller pumps and valves is any less complex or expensive than a system that uses a simple, well-understood motor with straightforward mechanical linkages. Without any evidence for the rectitude of the proffered rationale, it must be regarded as unsupported conjecture, dooming the *prima facie* case.

Additionally, certain allegations in the Office Action regarding dependent claims are incorrect. With respect to the rejection of Claims 17 and 18 based on a combination of Brown with the keyboard references, there is no fair prior art suggestion to combine the references as proposed because Brown is directed not to keyboards but to establishing a static position of a bed mattress, and to boosting a person up and off of a chair. Establishing a static position of a bed and boosting people off chairs is not pertinent to the keyboard field. That raises the question, where is there a *prior art* suggestion to combine the controller of Brown with the keyboard devices? The suggestion to combine references may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or in some cases from the nature of the problem, but "more often [the suggestion] comes from the teachings of the pertinent references". The range of sources available does not diminish the requirement for *actual evidence*, and "broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence", In re Dembiczak, 175 F.3D 994, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999). As set forth in Dembiczak, "the best defense against the subtle but powerful attraction of hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references", Id. at 999, 50 U.S.P.Q.2d at 1617.

Here, absolutely no evidence has been adduced of record of any knowledge in the art that controllers in furniture-related devices can be used in keyboard-related devices. The proposed combination of Brown with the keyboard references consequently lacks the requisite prior art suggestion and accordingly is legally deficient under the MPEP.

1161-CLAM3

CASE NO.: 1161-1.CIP
Serial No.: 09/883,867
November 14, 2004
Page 10

PATENT
Filed: June 18, 2001

Turning to the rejection of Claims 22 and 24, the examiner simply dismisses these limitations as being "obvious through routine experimentation". That kind of rejection finds whatever legitimacy it might have only in the context of claimed numerical ranges, MPEP §2144.05. It has no place in a context where actual mechanical limitations are being recited, such as a bladder being movable within the support platform (Claim 22) or a bladder being disposed closer to the front edge than the rear edge (Claim 24).

Respectfully submitted,



John L. Rogitz, Atty. of Record, Reg. No. 33,549
750 "B" Street, Suite 3120, San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

5

1161-CI.AM3